IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 35576 of 2007(I)

PETITIONER:

KORA ABRAHAM, AGED 65 YEARS,
S/O. LATE KORA, CHEROLIKKAL HOUSE, PADINJATTINKARA
POST, KADAPLAMATTOM, KOTTAYAM DISTRICT,PIN-686 571

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR
SRI.ABHILASH AKBAR
SRI.T.B.SIVAPRASAD

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF
KERALA, DEPARTMENT OF HOME,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DISTRICT MAGISTRATE, KOTTAYAM.

3. SUPERINTENDENT OF POLICE, KOTTAYAM.

4. CIRCLE INSPECTOR OF POLICE,
KOTTAYAM EAST, KOTTAYAM.

5. SUB INSPECTOR OF POLICE,
AYIRKUNNAM POLICE STATION, KOTTAYAM.

6. SASIDHARAN NAIR,
POOVAKUZHY VEEDU, PARAMPUZHA, THIRUVANCHOOR,
KOTTAYAM.

7. HARI,
PANCHAYATH MEMBER, WARD NO.XV.

8. JIJI,
KRISHNA HOUSE, PARAMPUZHA, THIRUVANCHOOR,KOTTAYAM.

9. THANKAMMA KESAVAN,
AMBALUVALEL HOUSE, THIRUVANCHOOR,KOTTAYAM.

10. K.B. SOBHANA,
IRUKAVALA VEEDU, THIRUVANCHOOR,KOTTAYAM.

11. VENU,
KUZHIYATTIL VEEDU, THIRUVANCHOOR, KOTTAYAM.

R1 TO R5 BY GOVT.PLEADER SRI.P.K.RAVIKRISHNAN.
R6 TO R11 BY ADV. SRI.J.KRISHNAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.35576 of 2007-I

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Dated this the 10th day of December, 2007.

JUDGMENT

"CR"

1.The petitioner bid the right to sell toddy from T.S.No.43/2007-08 of Thiruvanchoor in Group I of Pampady Range and was given Ext.P1 licence. From the inception, the local people were objecting to the conduct of the shop. Ext.P2 F.I.R. was registered on that day for offences punishable under Sections 143, 147, 149, 323, 427 and 447 IPC against different persons who were alleged to have trespassed into the toddy shop and damaged the goods belonging to the petitioner and had also involved in assault. The petitioner moved this Court for an order of police protection. This Court noticed that the private respondents therein were involved in objecting to the conduct of the toddy shop. This Court, therefore,

noticed that they may have a right to conduct 'dharna' in a peaceful manner, however they cannot take law into their hands and cause physical obstruction to the functioning of the toddy shop. The police officials were directed to see that there is no law and order situation created by any of the parties. The private respondents in that writ petition were given the liberty to pursue their remedies before the District Collector.

2.In the meanwhile, the private respondents, who were conducting the 'dharna', complained about the deployment of 'gundas' and misbehaviour to ladies, including assault. As a matter of fact, that led to the registration of Crime No.70/07, obviously, even before Ext.P2 Crime No.80/07. Crime 70/07 is registered for offences punishable under Sections 294(b) and 509 read with Rule 34 IPC. That was registered on 2-4-2007, while Ext.P2 was registered on 13-5-2007. Thus, there

were two complaints with the police; one accusing the licensee of interfering with the right of the private respondents to conduct 'dharna' in opposition to the housing of the toddy shop in the building in question and the other, a complaint by the licensee regarding trespass, assault and deprivation of property, by the private respondents.

3. On the basis of the complaint of the private respondents, the District Magistrate obtained the report of the police and the parties were heard. The Sub Inspector of Police, Ayarkunnam was of the firm view that the continued functioning of the toddy shop in the area will be detrimental to peace and tranquility in that area. After issuing Ext.P5 which was interlocutory in nature, the impugned Ext.P9 has been issued after Ext.P7 was quashed by this Court as per Ext.P8 judgment. Among other things, the District Magistrate has stated in Ext.P9 that the Sub Inspector of

Police, Ayarkunnam has stated that the entire locality, thereby meaning that the people of the locality, was against the shop and that if the shop was opened again, there was every likelihood that law and order problem could erupt again, disturbing peace and tranquility of the area. He had also brought to the notice of the District Magistrate that three criminal cases have been registered in connection with that particular issue and the cases have been charge-sheeted. The private respondents had reported before the District Magistrate that the functioning of the shop will lead to severe law and order problems and will adversely affect the peace and tranquility in the area. They also feared that the women and children will not be able to move about freely and fearlessly to the area, if the toddy shop was allowed to function. In contrast, the plea on behalf of the petitioner was that after the Division Bench had issued Ext.P4 judgment, there was no law and order problem in

the area, in the sense, that no crime was registered and no commission of offence was reported. I may also notice from Ext.P5 that according to the private respondents, there is a 'kudumbasree' unit within the distance of 30 meters and a nursery school within a distance of 150 meters from the toddy shop in question. However, the learned counsel for the petitioner states that the 'kudumbasree' unit was brought up only after the toddy shop commenced its activities and was essentially planned to disturb the toddy shop.

4.In so far as the power of the District Magistrate under Section 54 of the Abkari Act 1 of 1077, for short, the “Act”, is concerned, a reading of that provision may appear to show that one of the legislative intentions is that the existence of the toddy shop shall not, in any manner, contribute or aggravate any unlawful assembly or riot which may take place in the vicinity of a

toddy shop and that an abkari shop shall not be the cause of a riot or unlawful assembly. The Division Bench of this Court has held in Pushkaran v. Asst. Excise Commissioner [1995 (2) KLT 553], that Section 54 provides wide powers to the District Magistrate to close down any shop and that such power to close down, includes the power to shift a shop from an objectionable place to a non-objectionable place which, in the view of the Bench, was not a draconian step as compared to the power to close down. Having regard to that decision, it may not matter much as to whether the private respondents were at fault in pushing their objections to the toddy shop, by way of 'dharna' beyond legal permissible limits.

5. The statutory duty of the police under Section 149 of the Code of Criminal Procedure and Section 29 of the Kerala Police Act, 1961 to prevent the commission of cognizable offences, if the police

is notified, is not a duty that can be washed off. Such empowerment of the police is as part of the police power of the State and it is part of the police duty to ensure that none takes the law into his hands. This is what has been stated, also in the second sentence of the last paragraph of Ext.P4 judgment of the Division Bench, inter-partis. The State and the police cannot stand as mute spectators, if one exceeds his limit in the matter of exercising his fundamental right to freedom of expression in terms of the Constitution. Therefore, if the private respondents, in the process of holding the 'dharnas', lead to any situation where a cognizable offence is likely to be committed and if there is a reasonable apprehension that a cognizable offence is about to be committed, it is the bounden duty of the police to prevent the commission of such offences. Viewed in this angle, the tranquility and peace of an area depends not exclusively on the volition of the

people of that area. That is something that the State has to ensure within the format of the Constitution and the Laws.

6.The District Magistrate, who has also the power under the Code of Criminal Procedure, to ensure that peace and tranquility in an area is preserved, has to strike a meaningful balance between the powers exercisable under Section 54 of the Act and the powers available in Chapters VIII, X and XI of the Code of Criminal Procedure and preserve the right of parties, including the right, if any, of the petitioner on the basis of the privilege extended to him by the State, to vend toddy in terms of the Act and the Kerala Abkari Shops Disposal Rules, 2002, for short, the “Rules”. Being the principal revenue officer in the District, the District Collector, faced with any complaint regarding the conduct of the shop in the locality, could have also referred the matter for the consideration of the Excise

Commissioner, who has fairly wide powers in terms of the Act and the Rules, including the power to order closure indefinitely; the power to order shifting and to issue such other orders which may regulate the right of the petitioner to execute the privilege granted by the State to vend toddy.

7. The ground reality having been reported by the police, the impugned order cannot be found to be vitiated on any jurisdictional error or legal infirmity, in view of the ratio of Pushkaran (supra). The learned counsel for the petitioner, however, pointed out that the order for closure for six months imposed as per the impugned order is essentially a closure order for all times to come because, the licence of the petitioner would not survive beyond the end of the abkari year ending 31-3-2008.

8. In the result, without interfering with Ext.P9 order, it is directed that if the petitioner

moves for re-consideration of Ext.P9 order, with the passage of time based on any changed circumstances, the District Magistrate shall consider whether Ext.P9 closure order is to be withdrawn. The petitioner will also be at liberty to seek remedies, if any, before the Excise Commissioner under the Act and the Rules, on the facts and circumstances of the case. The writ petition is disposed of accordingly.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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